United States Court of Appeals

for the Second Circuit

APPELLANT'S REPLY BRIEF

To be Argued by
LLOYD CONSTANTINE

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JOSEPHINE McGRAW, individually and on behalf of her minor dependent children and all persons similarly situated,	:	
Plaintiff-Appellant,	:	Docket No. 76-7102
-against-	:	
STEPHEN BERGER, individually and as Commissioner of the New York State Department of Social Services,	:	
JAMES DUMPSON, individually and as Commissioner of the New York City Department of Social Services, and	:	
THE NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES,	:	
Defendants-Appellees.	:	

REPLY BRIEF FOR PLAINTIFF-APPELLANT

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PREFACE

Plaintiff-Appellant JOSEPHINE McGRAW submits this brief in reply to Defendant-Appellee's brief served and filed on June 7, 1976*, in accordance with the amended scheduling order in this case.

In that Rule 31 of the Federal Rules of Appellate Procedure requires the filing of a reply brief three days prior to oral argument, i.e., by June 8, 1976 in the instant case, plaintiff had less than one day, rather than the ususal 14 days, to file her reply brief. Plaintiff's motion for leave to file a reply brief subsequent to oral argument was denied.

Plaintiff is desirous of an expeditious hearing of this appeal and rather than seek an adjournment will file this highly abridged and hastily prepared reply. Plaintiff respectfully seeks the Court's understanding in this endeavor and would remind the Court that plaintiff has had only one day to prepare this brief and that the arguments are by necessity not as fully developed or polished as plaintiff might have wished.

Plaintiff will not recapitulate arguments set forth in her brief, but will solely direct her attention to new decisions cited by defendants, a brief amicus curiae

*Counsel for plaintiff, LLOYD CONSTANTINE received the defendant's brief at 9:00 A.M., June 8, 1976. It was served on his office at 5:00 P.M., June 7, 1976.

submitted by H.E.W. in Johnson v. Likins, No. 4-75-Civ-318 (D. Minn., 10/10/75) submitted and cited by defendants, and several misstatements of fact and law in defendants' brief.

Plaintiff will adhere to the citation system adopted by defendants in their brief: When citing to portions of the "record"* submitted by plaintiff the prefix R will be used, e.g., the decision below, pages 1-18 and a-c, is found at "R1--R21." Portions of the "record" submitted by defendants will be cited with the prefix SR, e.g., defendants' answers to plaintiff's interrogatories would be cited as "SR-6."

*The so-called record portions submitted by the parties in accordance with the March 25, 1976 order of the Honorable William H. Timbers also contain unreported decisions the parties have cited.

POINT I

THE DECISIONS IN HAGANS v. BERGER and STREERE v. STATE OF MINNESOTA ARE INAPPOSITE TO THIS CASE

Defendants rely on the recent decision of this Court in Hagans v. Berger, No. 76-7101 (2nd Circuit June 2, 1976) (S.R. 65-79) and Steere v. State of Minnesota, No. 285 (Minn. Sup. Ct., May 21, 1976) (SR-40-64). Neither case is apposite to the instant appeal.

In Hagans this Court distinguished other cases dealing with the legality of overpayment recoupment and stated "The State has now argued, however, that no overpayment is involved. We agree." (Hagans P. 12, SR-76). The clear distinction between Hagans and cases involving the legality of various procedures for recouping overpayments, unintentionally made by welfare agencies, is discussed throughout this Court's decision. (P.9 ¶ 1, SR-73; P. 12 ¶ 4, SR-76).

The Hagans' decision further highlights a basic difference in the cases. In Hagans the plaintiffs challenged the legality of recouping funds previously advanced and not possessed by the recipient at the time of the recovery. (P. 6, SR-70). Plaintiff herein has never contended that she does not have the disregarded income which defendants seek to recoup. Plaintiff's contention is that AFDC payment reduction may not be predicated on the existence of work incentive income which Congress has required to be disregarded when determin-

ing that same assistance payment. There is no question that plaintiff has the disregarded income. Congress explicitly mandated that she have it and shielded it by requiring its "disregard" in the payment of assistance and the need determination. 45 C.F.R. §§ 233.20(a) 7 & 233.20(a)(3)(ii)(a).

In Hagans this Court found that recoupment of advances, paid upon the recipients request, to prevent eviction and the consequent disruption of family life, was consistent with the spirit and intent of the AFDC program as declared by Congress in 42 U.S.C. §601, i.e.,

> "to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection."
> (Emphasis added)
> (P. 5, SR-69)

The income disregard provision is the very heart of the Congressional objective as expressed in the "maximum self support and personal independence" language. The same day that Congress enacted the income disregard it added similar or identical language of purpose to 42 U.S.C. §§ 602(a)(14) and 606(d). (Johnson Dec p. 34, R-81).

In 42 U.S.C. §602(a)(8), Congress enacted a mandatory provision whereby working recipients retain exactly "$30 and 1/3" of their earnings above the level of payment provided to non-working families. The rationalizations for the

challenged practice proferred by the defendants and H.E.W., and approved by the Court below, are of three kinds. That the Congressional mandate is fulfilled by accounting procedures which leave the working recipient with no more money than the non-worker. Second, that Congressional intent is not thwarted by suspensions or diminutions of the work incentive, characterized as temporary, although they may last for several years. Finally, that the fiscal integrity of the AFDC program must be achieved by withholding mandatory work incentive payments rather than employing the legal methods that States have to control their AFDC expenditures.

Steere v. State of Minnesota involved the withholding of earned income disregards when a recipient knowingly expended income tax refunds which she received after she had been advised that the refunds would be considered income reducing her AFDC payment. The Court explicitly distinguished Johnson v. Likins, supra, stating:

> The instant case is distinguishable from Johnson since the conduct of the recipient, and not the error of the agency, was the cause of the overpayment. (P. 18, SR-57)

and

> We emphasize that this decision is based upon the particular facts of the instant case and the statutes and regulations relevant thereto. We offer no opinion... on the merits of the case before Judge Larson or his arguments.

> [referring to Johnson] we leave to future cases the ultimate resolution of these matters. (P.24, SR-63).

The decision clearly has no force with respect to recoupment of agency caused overpayments received by plaintiff McGraw and the majority of her purported class. Furthermore, with respect to the remainder of the purported class, whose overpayments were caused by their own non-wilfull error, the Steere case is again inapposite. The Court characterizes the knowing expenditure of the tax refunds as a "willful failure" to report changes in income (P. 20 N. 13, SR-59) and at great length likens the recipients' actions therein to fraud. (P's. 19-20, SR-58-59) The Court approvingly quotes the finding of the referee in plaintiff Steere's hearing, upheld by the State Commissioner and approved by the Minnesota State District Judge, that

> "We do find that the petitioner is attempting a circuitous route of by passing responsibility for accounting for her income tax refund. The issue is not 'overpayment'; it is accountability for income received. (Emphasis added)

The Courts resolve not to sanction the dishonest acquisition of AFDC payments is manifest. None of this is at issue in the instant case.

To the extent that Steere discusses the general issue of recoupment from §602(a)(8) income disregards, that Court commits the same basic errors as the Court below. These are

fully discussed in plaintiff's main brief. To wit: The Steere Court focuses on the literal wording of §§ 602(a)(7) & (8) that "30 and 1/3" shall be disregarded in determining "need" failing to understand that Congress also required the disregard to be applied in the payment of assistance 45 C.F.R. §§ 233.20(a)(7) and 233.20(a)(3)(ii)(a), Engelman v. Amos, 404 U.S. 23 (1971). The lower Court's similar error is discussed at pages 29-32 of plaintiff McGraw's brief. Second, the Steere Court (p. 12-14, SR-51-53) and the Court below emphasized that the challenged regulations would not result in recoupment below the relevant Statewide "need" standards. The legal irrelevance of this factor is fully discussed at pages 25-28 of plaintiff's main brief. Finally, the Steere Court (p. 21, SR-60) and the Court below found that a partial work incentive or a temporary suspension thereof does not violate the Congressional mandate that "$30 and 1/3" shall be disregarded whenever assistance is paid or need determined. This contention is discussed at pages 21-23 of plaintiff's main brief.

POINT II

HEW's POSITION SUPPORTING THE CHALLENGED PRACTICE IS INVALID

Plaintiff McGraw formally requested that H.E.W. submit a brief amicus curiae in this case. Plaintiff's request was denied in letters from H.E.W.'s Regional Attorney and the Office of General Counsel dated April 29, 1976 and May 18, 1976 respectively.*

Defendants have submitted a copy of H.E.W.'s amicus brief in Johnson v. Likins (SR-19-34). Plaintiff believes that an extended reply to a brief from another case is improper and unwarranted. Plaintiff fully apprised the Court below (R-143-152 and this Court (Plaintiff's brief pages 33-42) of H.E.W.'s support of the challenged practice, its enabling regulation, 45 C.F.R. § 233.20(a)(12)(i)(A)(1), its clarifications thereof, and H.E.W.'s proposed regulation, which will continue to support and extend the practice of recoupment of § 602(a)(8) disregarded income. Plaintiff's refutation of the validity of H.E.W.'s regulations and position are fully set forth at pages 33-42 of her brief. However, plaintiff does feel constrained to briefly comment on several assertions made in the Johnson amicus brief, now that defendants have submitted that brief to this Court.

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* Copies of these letters are annexed hereto as Addendum "A".

H.E.W. asserts that § 602(a)(8) income is not available for computing need nor for determining the assistance payment, but is available for recoupment, which it contends, does not affect the assistance payment. The agency in a display of arrogant double talk states "Thus for the State to deduct the amount of the recoupment from the benefit check does not constitute a reduction in the amount of the grant" (SR-24), (Emphasis added). The assertion is that the assistance payment is not reduced when the recoupment is effected, because the disregarded income replaces the portion of the payment taken away, even though it is conceded that the § 602(a)(8) income must be disregarded in determining that assistance payment. No paraphrase does justice to H.E.W.'s own words: They state:

> The income received which had been disregarded for purposes of determining the grant is available to the recipient in lieu of the amount recouped from the grant check to meet the need standard or portion thereof which the state has undertaken to provide. No recomputation of the grant is involved, since the figure which was ascertained in the determination of need remains constant and the recoupment is substantively taken from the other available income which was never used to reduce the grant. (SR-24)
>
> and
>
> The recoupment is conceived of as being captured from the disregard

> funds with the assistance payment remaining the same. Rather than physically collecting the earned income for this purpose and paying the same size assistance check, for purposes of administrative convenience, the state has chosen to reduce the amount of the assistance check and to tell the recipient that the remainder of this assistance payment islocated in the equivalent amount of the disregarded income that he already possesses. (SR-32).

H.E.W. directs the recipient to find the amount of money taken from his payment in his work incentive income which could not be considered in computing that same AFDC payment, and this violation of the statute is termed "administrative convenience."

H.E.W asserts that the Congressional intent to provide cash work incentives is fullfilled if the proper computational order is followed, whether or not the working recipient actually gets the added income. H.E.W. states:

> had Minnesota chosen to recoup from 100% of the disregarded income, it would not have nullified the work incentive objective prescribed by the Congress, nor would it have abandoned the $30 plus one-third formula of the statute for making the initial need determination. All recipients of AFDC would still have the earned income disregard as a work incentive. Only those who had benefitted by overpayment would be subject to recoupment and as soon as the overpayment had been recovered, the recipient would again have the advantage of the immediate incentive. However, even during the period of recoupment,

> the work incentive is not frustrated. A recipient would not likely quit his present employment because of the recoupment, since such action would result in the application of the sanction prescribed in § 402(a)(8)(B) and (C) or if a WIN registrant (under title IV Part C) the sanction provided in §402(a)(19)(F). (SR-29-30)
> (Emphasis added)

H.E.W. asserts that the work incentive objective of § 602(a)(8) is not thwarted because only some recipients (Plaintiff's class and others similarly situated in other States) are denied their earned income, and because punitive sanctions act as a work incentive when the monetary incentive mandated by Congress is withheld. The sanction in § 402(a)(8)(C), 42 U.S.C. § 602(a)(8)(C) is the loss of the § 602(a)(8) disregard. H.E.W. is saying that a recipient whose disregarded earnings are withheld will not quit work because the state can apply the sanction of withholding the benefit of the disregard.

H.E.W. shows that its regulation permits recoupment of the entire disregard both in states paying their full standard of need and in states paying less than need, allowing these latter states to recoup down to levels well below subsistence, (SR-23 ¶ 2), or as Judge Larson stated "recoupment from the mouths of hungry children." (Johnson P. 36, R-89)*.

*This admission points out the error committed by the Court below in this regard. See Plaintiff's brief page 26.

Finally H.E.W. asserts that in contrast to § 602 (a)(8), certain statutory benefits are exempted from over-payment recoupment by explicit language. Plaintiff has already shown that there is no language in any of these statutes which in any way refers to AFDC recoupment, and that the AFDC title is completely devoid of any mention or mechanism for recovery or recoupment, in contrast to explicit provisions in other Social Security Act benefit programs (Plaintiff's main brief at page 41). H.E.W. has chosen to single out for emasculation § 602(a)(8), the major work incentive provision of the AFDC title.

POINT III

THE CHALLENGED REGULATIONS PERMITS WITHHOLDING OF ALL OR PART OF THE EARNINGS DISREGARD. DEFENDANTS HAVE MISSTATED THE EFFECT OF THEIR OWN REGULATION

At pages 10 and 18 of their brief defendants have misled the Court by representing that the hardship regulation found at 18 N.Y.C.R.R. § 352.31(d)(4), which limits recoupment of overpayments to 10% or 15% of household needs*, necessarily prevents the entire disregard from being withheld to recoup an agency caused or non-wilfull recipient caused overpayment. Defendants have submitted a State Administrative letter No. 74 ADM-11B (8/8/74) which reveals the truth in this matter. (SR-13-14). At SR-14 the letter states:

> NOTE: Where the exempted income or disregards which must be utilized as being currently available are greater than the public assistance grant, the grant shall be withheld until the amount of the excess payment have been recouped.

This is precisely what was intended when the defendant City agency advised the plaintiff that

> "Your [semi-monthly] income from the period July, 1974 to present should have been $127.59, not $80.43 as previously budgeted. This resulted in $990.36 in overpayment for this period.

*10% in the case of one recoupment and 15% if two or more and recoupments are being effected simultaneously.

> [The New York regulation] permit[s] recoupment on amounts up to the total exempted income. Since your budget deficit is less than your exempted income your case will be suspended for 13 issue[s] until this amount is recouped." (Decision Below p. 7 R-7) (Emphasis added)

As the Court below stated "... the City agency proceeded to reduce the McGraws' semi-monthly AFDC payments by 'withholding' a portion of the earned income disregards; the agency's departure from its initial intention to suspend its payments to the McGraw's remains, to date, unexplained." (Decision p. 8, R-8). This is true notwithstanding defendants post-facto attempt to rationalize an apparent error as an application of a benevolent hardship regulation.

An Income Maintenance Memorandum of the defendant City agency reaffirms this policy of allowing the entire disregard to be withheld by grant reduction or grant suspension, if the disregarded income is greater than the amount of the payment. I.M. #16/75 annexed hereto as Addendum "B" states:

> A. Overpayment Due to Administrative Error
>
> 1. Recoupment shall be made only if there is currently available income or resources exclusive of p.a. grant.*
>
> a. Available income* consists of exempted income and disregards.

b. In the event the exempted income or disregard is greater than the p.a. grant, the grant shall be stopped through VS-AS action (after completion of the M-3c process) until the overpayment has been recouped.**

*(Emphasis in original)
**(Emphasis added)

The 10% and 15% limits in the hardship regulation refer to "household needs." Disregarded income in New York is by definition in excess of "needs" and the hardship regulation has no application to withholding of the disregard. This fact is reflected in I.M. #16/75 (Addendum "B" p. 2) which states with respect to fraudulently induced overpayments:

> NOTE: In cases of willful withholding of information, State regulations permit recoupment from both the p.a. grant and available income/resources, if any. Therefore, in addition to 10% of the household needs, an amount equal to any currently available income/resources may be recouped from the current p.a. grant. (Available income is defined as exempted income and disregards.) (Emphasis in original)

That is, recoupment by withholding the disregarded income is an action which does not affect what are termed "household needs." See also footnote 5 Hagans v. Berger, supra. (SR-79)

Plaintiff has shown that the recoupment of any part of the disregard violates the Act*, but is desirous of informing the Court as to the actual practice in this State.

---

*Plaintiff main brief Ps. 21-23.

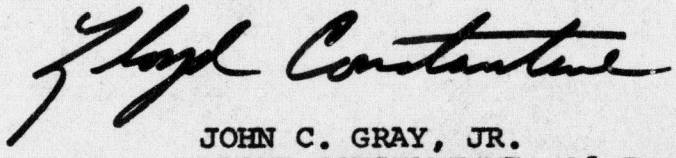
All other arguments by the defendants have been adequately dealt with in plaintiff's main brief.

CONCLUSION

For the foregoing reasons, and the reasons stated in plaintiff's main brief, the order of the District Court denying plaintiff's motions for a preliminary injunction and class certification, and granting defendants summary judgment, should be reversed in all respects and remanded for entry of a judgment granting plaintiff class certification, and declaratory and injunctive relief, consistent with plaintiff's prayer for relief.

Dated: June 9, 1976
Brooklyn, New York

Respectfully submitted,



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Attorney for Plaintiff-Appellant

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
REGION II
FEDERAL BUILDING
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10007

April 29, 1976

OFFICE OF THE
REGIONAL DIRECTOR
GC:RA:II:JTL

Lloyd Constantine, Esq.
Brooklyn Legal Services Corp B
152 Court Street
Brooklyn, New York 11201

Re: McGraw v. Berger U.S.D.C. S.D.N.Y.
75 Civ. 4682

Dear Mr. Constantine:

We are in receipt of your letter dated April 19, 1976, enclosing copy of the decision of the District Court in the subject case.

We have forwarded your request that the Department submit an amicus brief in the subject case to our central office for their consideration. If you have any questions, please contact Mr. Galen Powers, Assistant General Counsel, Human Resources Division 330 C Street, Washington, D.C..

Sincerely,

Borge Varmer
Regional Attorney

BY: Jerome T. Levy
Jerome T. Levy
Deputy Regional Attorney

ADDENDUM "A" Page 1.

plaintiff might adequately represent the interests of

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
REGION II
FEDERAL BUILDING
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10007

May 18, 1976

OFFICE OF THE
REGIONAL DIRECTOR

GC:RA:II:JTL

Lloyd Constantine, Esq.
Brooklyn Legal Services Corp B
152 Court Street
Brooklyn, New York 11201

Re: McGraw v. Berger, U.S.D.C.
S.D.N.Y. 75 Civ. 4682

Dear Mr. Constantine:

With reference to our previous correspondence concerning the captioned matter, the Office of General Counsel has determined that it will not file an amicus brief therein. Naturally, we have no objection to your submitting to the Court the amicus brief prepared by the office in Johnson v. Likens.

Sincerely,

Jerome T. Levy
Deputy Regional Attorney

ADDENDUM "A" P. 2

secured a job as a cook's helper more than three years

PAYMENT OF GRANTS: Overpayments and Underpayments | 1/24/75 IM #16/75

Cross-Reference: HOUSING; UTILITIES; FRAUD/RECOUPMENT

TO: Center Director
FEP Director

FROM: Martin Burdick
Director, I.M.P.

Distribution: IMD 5

Administrative Staff
Supervisor of IM Groups Housing
Operating Staff of IM Groups

Replaces: IM #18/72
IM #179/74
(PAYMENT OF GRANTS)

Amends: IM #234/73 (Sec. IIC)
Amended + Supplemented by IM # 42/75

PURPOSE

To provide instructions for (1) recoupment of overpayments to clients because of administrative error or withholding by recipient of information affecting the amount of the p.a. grant, and (2) correction of underpayments.

BACKGROUND REFERENCE

N.Y. State Administrative Letter, Transmittal No. 74 ADM-118, 8/8/74.

DETAILED INSTRUCTIONS

A. Overpayment Due to Administrative Error

1. Recoupment shall be made only if there is currently available income or resources exclusive of p.a. grant.

   a. Available income consists of exempted income and disregards.

   b. In the event the exempted income or disregard is greater than the p.a. grant, the grant shall be stopped through VS-AS action (after completion of the M-3c process) until the overpayment has been recouped.

2. Recoupment is limited to overpayments made during the 12 months preceding the month in which the overpayment is discovered.

B. Overpayment Caused by Recipient's Failure to Report Change in Income or Resources, or other Fraud

1. Recoupment shall be made from the p.a. grant irrespective of current income or resources.

2. There is no 12-month limitation on recoupment of such overpayment.

3. The following criteria shall be applied in computing the amount to be recouped:

(cont'd)

ADDENDUM "B" Page 1

a. Recoupment may not exceed 10% of the household needs, i.e., the budget of the household before income, if any, is deducted. (In composite cases, the term "household" refers only to the case which actually received an overpayment, not to the entire composite household.)

NOTE: In cases of willful withholding of information, State regulations permit recoupment from both the p.a. grant and available income/resources, if any. Therefore, in addition to 10% of the household needs, an amount equal to any currently available income/resources may be recouped from the current p.a. grant. (Available income is defined as exempted income and disregards.)

b. If there are two or more simultaneous recoupments for different reasons, the total reduction shall not exceed 15% of the household needs.

c. If the semi-monthly amount to be recouped is greater than the amount of the current semi-monthly grant, the grant shall be stopped through VS-AS action (after completion of the M-3c process) until the amount of the overpayment has been recouped.

NOTE: State regulations require a recipient to be notified at least semi-annually that he/she must report changes in income, resources or unexplained increases of more than $5.00 in excess of the prior p.a. payment, and sign an acknowledgment that he/she is aware of and understands this reporting obligation. (These requirements shall be explained to applicants/recipients during the application process and Face-to-Face recertification process. Pending revision of Forms DSS-1994 and W-909, the attached "Statement of Applicant/Recipient Affirming Obligation to Report Change in Circumstances" (Form W-916) shall be made part of and filed with these forms.

C. Advance Payment for Rent or Utilities

1. To prevent shutoff or restore utilities for which a grant was previously issued, the following action shall be taken:

a. Client must request that payment be advanced and the grant reduced in equal amounts for the next 12 semi-monthly periods.

b. Advance payment shall be made only to cover the cost of utilities for the four-month period immediately preceding the advance payment, provided the utility company agrees to continue or restore service.

NOTE: If the utility company demands payment for more than four months as a condition for continuing or restoring service, approval for such payment may be granted by the Center Director as an exception to policy. (In this case, the Center Director shall make an appropriate signed entry in the "Follow-Up" section of the structured history sheet, W-30J.)

ADDENDUM "B" P.2 (cont'd)

2. To prevent eviction for non-payment of rent for which a grant has been previously issued, the following action shall be taken:

a. Client must request that payment be advanced to the landlord and the grant reduced in equal amounts for 12 semi-monthly periods.

b. Rent shall be paid by two-party check in the following instances:

(1) If rent is advanced for more than one month.

(2) If more than one rent advance occurs in any 12-month period.

D. Correction of Underpayments

1. Retroactive payments shall be made only for the 12 months preceding the month in which the underpayment is discovered.

2. Retroactive payments shall not be considered as income or as a resource.

3. If total underpayment is less than $5 in a month, corrective action is not required.

E. Corrective Action on Recoupments Made After July 10, 1974.

IM Supv. 1. Withdraws W-106 follow-up card on all recoupment cases with current due date.

2. Assigns the following to IM Specialist for corrective action:

a. Recoupments based on administrative error.

b. Recoupments based on recipient's failure to report change in income or in resources, or other fraud.

IM Spec. 3. Upon receipt of cases, takes action as follows:

a. Cases with no income on which recoupment has been initiated due to administrative error:

(1) Restores budget.

(2) Prepares W-661 (SG code 4) to refund the amount recouped since July 10, 1974.

(3) Notifies client in writing (see attached revised letter).

NOTE: Letter attached to IM #179/74 shall no longer be used.

b. Fraud Cases

(1) Insures that in single recoupments, the grant has not been reduced by more than 10% of the household needs.

(2) Insures that where two or more recoupments are made simultaneously for different reasons, the grant has not been reduced by more than 15% of the household needs.

NOTE: Where corrective action is necessary, notifies the client in writing (see attached letter).

ADDENDUM "B" P. 3

a portion of the earned income disregards; the agency's

UNITED STATES COURT OF APPEALS
FOR THE SECONL CIRUIT

JOSEPHINE McGRAW, et al., Plaintiff-Appellant, -against- STEPHEN BERGER, et al., Defendants-Appellees,	Docket No. 76-7102

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
: ss.:
COUNTY OF KINGS)

LLOYD CONSTANTINE, being duly sworn deposes and says:

1. I am a member of the bar of this Court and not a party to the action. On the 9th day of June, 1976, I served copies of Plaintiff-Appellant's Reply brief on the attorneys for the Defendants-Appellants at the addresses listed below. Service was made by first class, prepaid, United States Mail.

Attorney General of the State of New York
Two World Trade Center, 45th floor
New York, New York 10047

Attn: Judith Gordon
Attorney for STEPHEN BERGER and
THE NEW YORK STATE DEPARTMENT
OF SOCIAL SERVICES

CORPORATION COUNSEL OF THE CITY
OF NEW YORK
Municipal Building
New York, New York 10007

Attn: Gayle Redford, Esq.
Attorney for JAMES DUMPSON and
his successors

LLOYD CONSTANTINE

Sworn to before me this

9th day of June, 1976

NOTARY PUBLIC

JOHN C. GRAY, JR.
Notary Public, State of New York
No. 31-6633285
Qualified in Kings County
Commission Expires March 30, 1978